IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.340-DBA of 1997

Date of decision: 01.02. 2007

State of Punjab.

-----Appellant.

Vs.

Paramjit Singh etc.

-----Respondents.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mr. M.S. Sidhu, Sr. D.A.G, Punjab
for the appellant.

Mr. S.K. Bawa, Advocate
for the complainant

Adarsh Kumar Goel, J.

The State has filed this appeal against acquittal of the respondents of the charges under Sections 120-B, 302 read with Section 120-B, 302 and 404 of the Indian Penal Code.

Case of the prosecution is that Paramjit Kaur, respondent No.3, widow of deceased Dilawar developed illicit relations with the nephew of Dilawar namely Jatinder Singh, when Dilawar had gone abroad. After Dilawar returned from abroad, he learnt about their illicit relations. He started harassing his wife on that account. For this reason, the accused Paramjit Kaur entered into a criminal conspiracy

with her sister Manjit Kaur, accused, her paramour Jatinder Singh, accused and Paramjit Singh alias Bhutto, accused to kill her husband Dilawar. Paramjit Kaur agreed to pay Rs.10,000/- to the accused Paramjit Singh @ Bhutto for committing the murder. She asked her husband to go to Village Ramgarh Jhuggian, where Jatinder Singh, Manjit Kaur and Paramjit Singh alias Bhutto murdered him and threw his dead body in the wheat field.

Harbans Singh, PW-7 resident of Village Ramgarh Jhuggian had gone to irrigate his wheat crop on February 02, 1995 and he noticed dead body of Dilawar, resident of Village Dhamai. He informed Gurmel Singh, Sarpanch. Thereafter, he along with others, went to Police Post Samundra for lodging a report. FIR was registered by ASI Gurmel Singh, PW-14 on the statement of Harbans Singh PW-7. Gurmel Singh, after recording the FIR, went to the place of occurrence, held inquest proceedings, sent the dead body for post-mortem examination and collected bloodstained earth from the place of occurrence and also seized bloodstained Parna having a corresponding cut and shoes of the deceased.

PW-1 Dr. Ashok Kumar conducted post-mortem examination on 03.02.1995 at 9.30 A.M. and found following injuries:-

> "1. Incised wound 10 x 2 cm on the right side of head extending from right eye brow outer edge to right side of head 8.2 cm above the right pinna. Skin of forehead eraised. On dissection, underlying muscles cut and outer table of bone cut.
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> 2. Incised wound 7 x 1 cm on the left side of head 5 cm above the left ear obliquely placed extending from

hair line to just behind the ear on dissection, muscles and outer table of bones cut.

3. Incised wound 18 cm x 5 cm on the right side of face and neck extending from right ear to middle of right clavicle. On dissection, underlying muscles of face cut, mandible cut, muscles and major vessels of the neck cut.
4. Incised wound 7 x 2.5 cm on the front of neck transversely placed 5 cm above the sternum manubri extending from right sternomastoid to left sternomastoid muscles. On dissection, muscles of the neck cut, major vessels cut, trachea cut.
5. Incised wound 2 x .5 cm on the front of neck 3 cm above manubrium sterni transversely placed.
6. Incised wound 1.5 cm x 0.5 cm transversely p0laced in front of neck supra-sternal notch.
7. Incised wound 3 x 1 cm on the right shoulder 2 cm from acromian obliquely placed. Underlying muscles cut.
8. Incised wound 2 cm x 1 cm on the left shoulder obliquely placed 1 cm below acromian.
9. Incised wound 6 x 1 cm on back of right forearm vertically placed extending from wrist to middle of right forearm.
10. Amputated terminal phalanx of the right index finger attached with skin tag with incised wound on terminal phalanx of palmer aspect of all the fingers of right hand.
11. Left hand amputated at the middle of palm with underlying cut bones exposed.
12. Incised wound 8 x 1 cm on sole of the right foot near base of toes extending from big toe to little toe.
13. Incised wound 2 x 1 cm on the dorsum of left foot near base of big toe, obliquely placed."

The doctor opined that the death was due to shock and haemorrhage on account of injuries Nos.3 and 4, which were sufficient in the ordinary course of nature to cause death and all the injuries were ante-mortem in nature. According to the Medical Officer, the probable time that elapsed between injuries and death was immediate and between death and post-mortem within 3 days.

After investigation, all the four accused were sent for trial. Paramjit Singh @ Bhutto was charged under Section 302 IPC while other accused were charged under Sections 302/120-B IPC. Paramjit Singh @ Bhutto was also charged charged under Section 404 IPC for misappropriating the golden ring of the deceased.

Prosecution relied upon the testimony of Dr. Ashok Kumar, PW-1, Sh. Arjan Khanna, PW-2, Constable Raj Kumar, PW-3, Paramjit Singh, MHC, PW-4, Constable Ram Parkash, PW-5, Head Constable Gurmeet Singh, PW-6, Harbans Singh, PW-7, Mangal Singh, PW-8, Sat Pal, PW-9, Pradeep Kumar, PW-10, Mistri alias Ramji Dass, PW-11, Avtar Singh, PW-12, Shrimati Amro, PW-13, ASI Gurmel Singh, PW-14, Constable Satnam Singh, PW-15, Inspector Kamal Ram, PW-16 and Charanjit Singh, PW-17.

PW-8 Mangal Singh deposed that on 31.01.1995 at 8.15 P.M., while he was going to the tubewell of Piara Singh in Village Ramgarh Jhuggian, he met the accused Jatinder Singh, Paramjit Singh and a lady. Jatinder Singh had fitted a hockey in the frame of his cycle. He told him that they were waiting for Dilawar, who had gone to Village Ramgarh Jhuggian. On his way back, he saw Paramjit

Singh @ Bhutto taking out motorcycle from a sugarcane field and all the three persons went away on that motorcycle towards Village Buqapur. He came to know about the murder of the deceased on February 02,1995 whereas his statement was recorded by the police on 07.02.1995.

PW-9 Sat Pal deposed that Paramjit Kaur had complained to him that her husband used to maltreat her, on suspicion, that she had illicit intimacy with Jatinder Singh.

PW-12 Avtar Singh deposed that Jatinder Singh made extra-judicial confession before him on 03.02.1995 at 4 P.M., to the effect that he along with Paramjit Kaur had killed Dilawar. Similar confessions were also made by Manjit Kaur and Paramjit Singh. Thereafter, they again came to him on 07.02.1995 and he produced them before the police. He had also informed the police on 04.02.1995 about the extra-judicial confessions. He was also witness of the disclosure-statement of Paramjit Singh, leading to recovery of Datar (Exh.P-1) and golden ring (Exh.P-23), disclosure-statement of Jatinder Singh, leading to recovery of cycle (Exh.P-22) and hockey (Exh.P-24) and that of Manjit Kaur, leading to recovery of clothes in a bag from her house.

PW-13 Amro deposed about the illicit relations of Paramjit Kaur and Jatinder Singh, when the deceased had gone to Dubai. Charanjit Singh, PW-17, brother of the deceased deposed about the illicit relations of Paramjit Kaur and Jatinder Singh and about frequent quarrels that used to take place between the deceased and his wife. He further deposed that on 31.01.1995 at 6.30 P.M., his brother had

gone on cycle with a hockey stick stating that he was going to Village Jhuggian in search of Jatinder Singh. He was wearing golden ring at that time. He came to know on 02.02.1995 that the dead body of the deceased was recovered from Village Jhuggian and he was a witness to the recovery of bloodstained earth and other items from the place of occurrence. He was also witness to the recoveries, at the instance of the accused persons.

The accused denied the prosecution allegations.

After considering the evidence on record, the trial Court held that the case of the prosecution was not proved beyond reasonable doubt, inter-alia, for the following reasons:-

(i) Evidence of Avtar Singh, PW-12, about extra-judicial confession, was not reliable; Jatinder Singh and his father had opposed him in the Panchayat elections.

(ii) Manjit Kaur and Paramjit Singh were of a different village and had no association with Avtar Singh and as such, they had no reason to repose confidence in him.

(iii) Recoveries were not reliable; Avtar Singh, PW-12, witness to the recoveries was not reliable; No local witness from Village Shekhupura Bagh, from where recoveries were effected, was joined. Othewise also, recovery of bloodstained weapon was not probable, as during interval, the accused had opportunity to wash it off;

(iv) No identification of articles recovered was established; Sugarcane field from where hockey was recovered was an open place and accessible to all and sundry.

(v) PW-17 Charanjit Singh was inimical to Paramjit Kaur, accused and was not a truthful witness.

(vi) Evidence of last seen, furnished by Pradeep Kumar, PW-10 and Mangal Singh, PW-8 was unreliable. His presence at the place in question, in normal circumstances, was unexpected. Mangal Singh, PW-8 even after coming to know of the murder, did not inform anyone. His statement was recorded on 07.02.1995.

(vii) Alleged motive was not mentioned at the earliest opportunity, when the statement of Charanjit Singh, PW-17 was first recorded by the police. If the deceased had suspicion on the character of his nephew, Jatinder Singh, he would not have gone in his search, as alleged; Evidence of mother of the deceased Smt. Amro, PW-13 was also not reliable. If she had seen the accused Paramjit Kaur in compromising position with Jatinder Singh, there was no reason for her to keep quit.

We have heard learned counsel for the State and perused the findings recorded by the trial Court.

Undoubtedly, the murder of Dilawar is an unfortunate event and there may be suspicion that the same was committed by his wife Paramjit Kaur, accused along with other accused, but in absence of any direct evidence or circumstances, which may be fully established, it cannot be held that acquittal of the respondents is arbitrary. Reasons for holding that the motive, circumstances last

seen, disclosure-statement leading to recoveries and extra-judicial confessions were not established cannot be held to be perverse. Even if two views can be taken, acquittal of the respondents is not liable to be interfered with.

Scope of appeal against acquittal has been gone into by the Hon'ble Supreme Court, inter-alia, in ***Jaswant Singh v. State of Haryana,*** AIR 2000 SC 1833, wherein it was observed:-

> "21**.** The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the order is clearly unreasonable it is a compelling reason for interference (see *Shivaji Sahabrao Bobade* v. *State of Maharashtra,* (1973 2 SCC 793: AIR 1973 SC 2622: (1973 Cri LJ 1783)). The principle was elucidated in *Ramesh Babulal Doshi* v. *State of Gujarat,* (1996) 9 SCC 225: 1996 AIR SCW 2438: AIR 1996 SC 2035 (1996 Cri LJ 2867):
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> > "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions."

We, therefore, do not find any ground to interfere with the order of acquittal of the respondents.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

February 01, 2007 **(H.S. BHALLA)**
ashwani **JUDGE**